

## 48A C.J.S. Judges § 229

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### A. In General

§ 229. Constitutional and statutory provisions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Judges](#) 40

**The disqualification of a judge may be based on constitutional provisions, statutory provisions, or court rules.**

The disqualification of a judge may be based on the provisions of a constitution,<sup>1</sup> on the provisions of a statute,<sup>2</sup> or on a court rule.<sup>3</sup> Most questions concerning a judge's qualifications to hear a case are not constitutional ones but rather are answered by common law, statute, or the professional standards of bench and bar.<sup>4</sup> In this regard, Congress and the states remain free to impose more rigorous standards for judicial disqualification than those mandated as a matter of due process.<sup>5</sup>

There is a constitutional right to have a neutral and detached judge.<sup>6</sup> The right to a constitutionally qualified judge does not implicate the principles of fairness over which the judge is the arbiter but instead chiefly concerns a judge's qualifications.<sup>7</sup>

The purpose of a statute<sup>8</sup> or court rule<sup>9</sup> governing the disqualification of judges is to guarantee a fair trial before an impartial judge.<sup>10</sup> In addition, the clear intent and purpose of such a statute is to give the assurance that the business of the courts will be conducted in such a manner as will avoid the suspicion of unfairness<sup>11</sup> and foster the appearance of impartiality.<sup>12</sup> Further, statutes governing the disqualification of a judge for cause are intended to ensure public confidence in the judiciary.<sup>13</sup> Such statutes are not intended as an instrument to secure delays or postponements of trial<sup>14</sup> or to provide parties with a tactical device to be used only after the judge has ruled against them.<sup>15</sup> Also, statutes governing disqualification for cause are not intended to safeguard an asserted right, privilege, or preference of a judge to try or hear a particular dispute.<sup>16</sup>

### ***Federal law.***

A federal statute<sup>17</sup> provides that any justice, judge, or magistrate judge of the United States must disqualify him- or herself in any proceeding in which the judge's impartiality might reasonably be questioned.<sup>18</sup> The goal of the statute is to avoid not only partiality but also the appearance of partiality.<sup>19</sup>

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### Footnotes

- 1 Tex.—*Fuelberg v. State*, 410 S.W.3d 498 (Tex. App. Austin 2013).
- 2 Tex.—*Nairn v. Killeen Independent School Dist.*, 366 S.W.3d 229, 280 Ed. Law Rep. 1129 (Tex. App. El Paso 2012).
- 3 Tex.—*Rhodes v. State*, 357 S.W.3d 796 (Tex. App. Houston 14th Dist. 2011).
- 4 U.S.—*Bracy v. Gramley*, 520 U.S. 899, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997).  
Idaho—*State v. Shackelford*, 314 P.3d 136 (Idaho 2013).  
Wash.—*Tatham v. Rogers*, 170 Wash. App. 76, 283 P.3d 583 (Div. 3 2012).
- 5 U.S.—*Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009).
- 6 Iowa—*State v. Biddle*, 652 N.W.2d 191 (Iowa 2002).
- 7 Tenn.—*State v. Blackmon*, 984 S.W.2d 589 (Tenn. 1998).
- 8 Alaska—*Nelson v. Fitzgerald*, 403 P.2d 677 (Alaska 1965).  
  
**Balancing right to fair trial with efficient administration**  
Wis.—*State v. Bell*, 62 Wis. 2d 534, 215 N.W.2d 535 (1974).

- 9 Mont.—State ex rel. Greely v. District Court of Fourth Judicial Dist., 180 Mont. 317, 590 P.2d 1104 (1979).
- 10 Cal.—Peracchi v. Superior Court, 30 Cal. 4th 1245, 135 Cal. Rptr. 2d 639, 70 P.3d 1054 (2003).  
N.D.—Giese v. Giese, 2002 ND 194, 653 N.W.2d 663 (N.D. 2002).  
As to right to impartial trial, generally, see § 228.
- 11 Alaska—Keel v. State, 552 P.2d 155 (Alaska 1976).
- 12 U.S.—Potashnick v. Port City Const. Co., 609 F.2d 1101, 54 A.L.R. Fed. 825 (5th Cir. 1980) (rejected on other grounds by, Pashaian v. Eccelston Properties, Ltd., 88 F.3d 77 (2d Cir. 1996)).
- 13 Cal.—Rossco Holdings Inc. v. Bank of America, 149 Cal. App. 4th 1353, 58 Cal. Rptr. 3d 141 (2d Dist. 2007), as modified on denial of reh'g, (May 11, 2007).
- 14 Mont.—State ex rel. Leavitt v. District Court of Thirteenth Judicial Dist. In and For Yellowstone County, 172 Mont. 12, 560 P.2d 517 (1977).
- 15 N.D.—Kemp v. City of Grand Forks, 523 N.W.2d 406 (N.D. 1994).
- 16 Cal.—Curle v. Superior Court, 24 Cal. 4th 1057, 103 Cal. Rptr. 2d 751, 16 P.3d 166 (2001).
- 17 28 U.S.C.A. § 455(a).
- 18 U.S.—Shell Oil Co. v. U.S., 672 F.3d 1283 (Fed. Cir. 2012).
- 19 U.S.—In re Reassignment of Cases, 736 F.3d 118 (2d Cir. 2013).